

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL: NALBARI**  
**Present: A.S.B. Laskar,**

**MAC Case No. 42(Injury) / 2018**

**Md. Sahidul Ali**  
**S/O Md. Rahim Ali**  
**Vill: Bhehbari**  
**P.S.: Mushalpur**  
**District: Baksa, Assam)-----Claimant**

**-V E R S U S-**

**1. Sri Rabindra Nath Das**  
**S/O Sri Dadhi Ram Das**  
**Village : Tatlapara**  
**P.S : Mushalpur**  
**District: Baksa -- Owner**

**2. Sri Akshay Choudhury**  
**S/O Late Dasarath Choudhury**  
**P.S. : Patacharkuchi**  
**District: Barpeta -- Driver**

**3. The New India Assurance Company Limited ----- Opp. Party.**

**The Ld. Counsels Appeared:-**

**For the claimant:----- Sri. Abhijit Malla Buzar Baruah**  
**For the Opp. No.3:----- Md. Moinul Haque**

**Date of Argument :----- 05.06.2020**  
**Date of Judgment :----- 19.06.2020.**

**( J U D G M E N T )**

1. The facts leading to the institution of this case in brief is that on 02.03.2017 at about 4 p.m, the claimant named above met with a vehicular accident at a place called Athgaon Rajasthan (Raipur) under the Mushalpur Police Station while he was going towards Thamna with his friend riding a motorcycle. While the claimant was on his way, the offending vehicle a tractor bearing No. AS-14-C/5437 which was allegedly driven rashly and negligently knocked his motorcycle. In the accident, the claimant sustained grievous injuries and soon after the accident he was taken to the GNRC Hospital, Guwahati. After the accident, an FIR was also lodged and a case vide Mushalpur P.S. Case No.19/17 was registered.

2. Narrating the above stated facts in detail, the claimant filed a claim petition U/S 166/140 of the M.V. Act impleading the owner, driver and the insurer of the offending vehicle as opposite parties claiming compensation amounting to Rs. 6,00,000/- under different heads.

3. On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties, who also made their appearance and contested the case by filing their respective written statement. In his written statement, opposite party no.1, the owner of the offending vehicle challenged the maintainability of the case and contended that he has been falsely implicated in this case. He also contended that there was no rash or negligence in driving the offending vehicle. He further contended that the driver of the alleged offending vehicle had a valid driving license and the vehicle was duly insured with the New India Assurance Company Limited vide Policy No.53090231160100002298 and the policy was valid till 28-06-2017. Similar to the opposite party no.1, the opposite party no.2 the driver of the offending vehicle also challenged the maintainability of the case. He also contended that there was no rash or negligence in driving the offending vehicle. He contended that at the time of the alleged accident, he had a valid driving license. He contended that at the time of the accident, the alleged offending vehicle, the Tractor was parked by the side of the road and the motorcycle driven by the claimant collided with it.

4. In its written statement the opposite party no. 3, The New India Assurance Company Ltd. also challenged the maintainability of the case. The Insurance Company denied all the averments and allegations made by the claimant in his claim petition. The Insurance Company also prayed for strict proof of the averments made by the claimant in his claim petition. The company also contended that the motorcycle driven by the claimant has not been implicated in this case.

5. Thereafter, going through the pleadings and hearing the parties, the following issues were framed by my Id. Predecessor-in-office:-

**Issues**

(i) Whether the claimant got injury on 02-03.2017 at about 4 p.m, due to rash and negligent driving by the driver of the offending vehicle no. AS-14-

C/5437 at Athgaon Rajasthan (Raipur)?

(ii) Whether the claimant is entitled to get any compensation as prayed for, and if so, to what extent and from whom?

(iii) To what other relief or reliefs the claimant is entitled to?

### **Decision & Reasons Thereof**

**6.** In this case the claimant adduced his evidence and also exhibited some documents. But the contesting opposite party abstained from adducing evidence. Let me see how far the claimant is successful in establishing his claim.

#### **Issue No.1:**

**7.** It is already stated that in his claim petition the claimant alleged that the accident occurred due to rash and negligent driving by the driver of the offending vehicle and it appears that during his evidence, the claimant reiterated the same. During his evidence the claimant, Md. Sahidul Ali narrated that on 02.03.2017 at about 4 p.m, while he along with his friend was going towards Thamna, the offending vehicle which was driven rashly and negligently knocked his motorcycle. He further narrated about his injuries and his treatment in the GNRC Hospital, Guwahati from 02.03.2017 to 05.03.2017 and from 27.04.2017 to 01.05.2017. He further narrated that he sustained grievous injuries in his left leg and he was treated with external fixation. He added that he was employed as Vestige agent and his monthly income was Rs.15,000/-. He also exhibited the Accident Information Report in Form 54, FIR, charge-sheet, seizure-list and medical documents. During his cross-examination, he admitted that he has not exhibited any document to prove his income. He denied the suggestion that motorcycle driven by him had collided with the Tractor. He also denied the suggestion that the accident occurred due to his own fault. He also denied the suggestion that the medical documents exhibited by him are not genuine.

**8.** I have very carefully perused the case record and heard the Id. counsels representing both sides. The Id. Counsel for the Company argued that the accident occurred due to fault of the claimant himself and he prayed for the dismissal of the claim petition. The Id. Counsel for the claimant argued that the rash and negligent driving by the driver of the offending vehicle has been established and he also tried to draw attention of this Tribunal towards the

documents exhibited by the claimant.

**9.** I have very carefully considered the submission advanced by the Id. Counsels and it appears that as in his claim petition, during his evidence also the claimant narrated the occurrence in detail and he also stated about the rash and negligent driving by the driver of the offending vehicle. It appears that the opposite party failed to rebut the evidence of the claimant regarding the rash and negligent driving by the driver of the offending vehicle. The opposite party also abstained from adducing rebuttal evidence regarding rash and negligent driving. The claimant also exhibited the FIR and the charge-sheet and it appears from the Ext. 3(1), the charge-sheet that it was submitted against the driver of the offending vehicle U/S 279/338 IPC. In my view, if the driver drove the offending vehicle carefully, the accident and the injury of the claimant could have been averted. The Accident Information Report in Form 54, the Ext. 1 also reveals the involvement of the offending vehicle and the parties in the accident. From all these, it appears that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. Hence, this issue is decided accordingly in favour of the claimant.

### **Issue Nos. 2 & 3**

**10.** While deciding earlier Issue, it is already seen that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. Now, the question is whether the claimant is entitled to the amount claimed by him as compensation. During his evidence the claimant narrated about the injuries and the treatment he received in the Hospital after the accident. It appears from the evidence that after the accident the claimant was treated in the GNRC Hospital, Guwaharti and the Exht. 7(1), the discharge summary certificate issued by the GNRC Hospital, Guwaharti reveals that the claimant was diagnosed with type II compound fracture of both bones of left leg and was treated with external fixation. From the documents exhibited by the claimant, it appears that an amount of **Rs.1,17,038/-** was spent for his treatment and there is no doubt that he is entitled to the amount spent for the treatment. Apart from that, the claimant is also entitled to be compensated for the pain and suffering undergone by him due to the injuries he had sustained in the accident. Considering the injuries and the sufferings of the claimant, I

hold that an amount of **Rs.25,000/-** will be sufficient for the pain and sufferings undergone by him due to the accident. Apart from the above, the claimant is also awarded **Rs.10,000/-** for the loss of amenities in life. In his evidence the claimant stated that his monthly income was Rs.15,000/-, but he has not exhibited any document to prove the same. However considering the age of the claimant I hold that a man of the age of 22/23 can easily earn Rs.7000/-(seven thousand) in a month. It appears from the record that the claimant was hospitalized from 02.03.2017- 05.03.2017 and from 27.04.2017- 01.05.2017 and it is my considered opinion that due to the injury the claimant was definitely unable to discharge his normal activities at least for a period of six months. Hence I hold that he had to incur loss of his income for a period of six months amounting to **Rs.7000 X 6=Rs.42,000/-**.

**11.** Now, the question is who is to pay the amount of compensation. It appears from the Exht.1, the Accident Information Report that the driver of the offending vehicle had a valid driving license at the time of the accident and the vehicle was duly insured with the New India Assurance Company Limited vide Policy No.53090231160100002298 and the policy was valid up to 28.06.2017. As such, I hold that the opposite party no. 3, the New India Assurance Company Limited is liable to pay the compensation.

#### **O R D E R**

**12.** Considering every facts and circumstances, it is hereby ordered that the opposite party No.3, The New India Assurance Company Limited shall make the payment of **Rs.1,17,038+25,000+10,000+42,000/=Rs.1,94,038/- rounded to Rs.1,94,000/- (Rs. one lakh ninety four thousand only)** in favour of the claimant within 60 days from today with interest @ 6% per annum from the date of filing of the claim petition on 03.02.2018.

Let a copy of the judgment be furnished to all the concerned parties within 15 (fifteen) days from today as per Provisions of Section 168(2) of the M.V. Act. This MAC Case is disposed of on contest.

**Given under my hand and seal of this Tribunal at Nalbari on this the 19<sup>th</sup> Day of June,2020.**

**Dictated & corrected by me.**

**Presiding Officer /Member  
Officer/ Member  
M.A.C.T, Nalbari**

**Presiding  
M.A.C.T, Nalbari**

**APPENDIX**

**Witness for the claimant:-**

Md. Sahidul Ali

**Witness for the opposite party**

Nil

**Documents exhibited by the claimant**

Ext. 1 : Accident Information Report in Form 54.

Ext. 2-: FIR

Ext.3: Charge-sheet

Ext.4: Seizure-list

Ext.5:MVI Report

Ext.6- 8: Medical documents.

**Documents exhibited by the opposite party**

Nil.

**Presiding Officer/ Member,  
MACT, Nalbari**